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**MEMORANDUM**

DATE: April 19, 2006

TO: Washington State Public Disclosure Commission  
MS: 40908

FROM: Nancy J. Krier, Senior Counsel  
MS: 40110

SUBJECT: **Commission F-1 Rules: Limited Liability Partnerships, Other Matters**

At your March 2006 meeting, you were provided background on a question from a filer regarding limited liability partnerships (LLPs) and reporting requirements for the personal financial affairs statements (PDC F-1 forms) pursuant to RCW 42.17.241(1)(g). The Commission discussed these new business entities such as LLPs, limited liability companies (LLCs), etc. The Commission discussed proceeding with rulemaking pursuant to RCW 42.17.241(1)(n) to address reporting of information that is similar to what is required of corporations and other more traditional business structures. That statute at (1)(n) authorizes the Commission to require reporting of "such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule."

This memorandum gives you additional information on current F-1 rules generally, and identifies options where LLP and similar entities may be specifically addressed. In addition, this memorandum identifies where the Commission may want to update other provisions of F-1 reporting rules including modification procedures, and provides options to consider. Finally, this memorandum provides information on possible future activities regarding LLPs or similar business entities next legislative session and/or by the Washington State Bar Association.

**CURRENT RULES**

The Commission's current F-1 rules are at chapter 390-24 WAC.<sup>1</sup> Those rules include:

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<sup>1</sup> The March 14, 2006 memorandum provided for your March 2006 contained a typo, and cited to chapter 390-20 WAC. The correct citation is chapter 390-24 WAC.

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390-24-010	Forms for statement of financial affairs.
390-24-020	Forms for amending statement of financial affairs.
390-24-025	Time for filing statement of financial affairs.
390-24-032	Definition -- Nonreimbursed public office related expense.
390-24-100	Definition -- Direct financial interest.
390-24-105	Definition -- Written sworn statement.
390-24-110	Definition -- Debt.
390-24-160	Definition -- Professional staff member.
390-24-200	Descriptions of real property.
390-24-202	Report of compensation from sales commissions.
390-24-203	Reporting of field trips and other excursions.
390-24-205	Report of legislation prepared, promoted or opposed.
390-24-210	Report of officers and directors of financial institutions.
390-24-301	Changes in dollar amounts of reporting thresholds and code values.

### • **OPTIONS – F-1 FORMS AND LLPs, LLCs, ETC.:**

**WAC 390-24-XXX; WAC 390-24-010; WAC 390-24-020**

The Commission could propose a new rule to address LLPs, LLCs and other similar newer business entities (a new WAC 390-24-XXX). To the extent reporting would be required that is not currently described on the F-1 forms, the forms in Commission rules would also need to be amended (WAC 390-24-010, WAC 390-24-020). With the Commission concurrence, PDC staff will initiate formal rulemaking and bring draft language to the Commission at a future meeting.

In addition, the Secretary of State's Office has adopted rules governing the registration of LLCs (chapter 434-130 WAC) and LLPs (chapter 434-135 WAC). Those rules would be reviewed for consistency with any proposed new Commission rules.

### • **OPTIONS - F-1 MODIFICATION INTERPRETIVE STATEMENTS:**

**WAC 390-24-XXX**

The Commission could also consider reviewing its current F-1 reporting modification interpretive statements to see if they likewise reflect current or modern reporting issues or practices. Those statements include PDC Interpretation 02-06 (spousal information),

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Interpretation 02-05 (motor vehicle dealers), Interpretation 02-04 (judges and judicial candidates), Interpretation 02-03 (lawyers and law firms) and Interpretation 91-01 (who is an officer).

As part of its review of F-1 filing procedures, the Commission could determine if those F-1 interpretive statements should be moved into rules. The State Administrative Procedure Act authorizes agencies to provide interpretive statements, but it also provides that “To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.” RCW 34.05.230(1). The rules could be placed into chapter 390-24 WAC.

### **• OPTIONS - CERTAIN F-1 MODIFICATION RENEWALS – BRIEF ADJUDICATIVE PROCEEDINGS:**

#### **WAC 390-37-140; WAC 390-28-060; Chapter WAC 390-28**

Finally, as part of this F-1 rules review process, the Commission may also wish to evaluate its procedure for considering renewals of F-1 modifications to determine if it wishes to utilize a process authorized by statute, and if it wishes to amend a rule to reflect current practices.

Currently, the entire Commission reviews in a hearing all initial F-1 reporting modification requests and all renewals (those with and those without changes). The hearing procedures are in WAC 390-28. However, RCW 42.17.370(10), the statute providing the Commission the authority to grant F-1 modification requests, also authorizes another process as follows:

Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding and no request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted. The commission shall adopt administrative rules governing the proceedings.

That is, by statute, certain renewals of modification requests can be heard in single commissioner hearings. Those include renewals three years old or less, and where the applicant is holding the same office or position of employment. If the Commission wanted to use this process, it could amend its current rule identifying those matters that may be conducted in a brief adjudicative proceeding (WAC 390-37-140).

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In addition, currently, the Commission has adopted a rule allowing for a hearing examiner (administrative law judge) to make the initial decision on a F-1 modification (WAC 390-28-060). However, in reality, that process is not used. Brief adjudicative proceedings on other PDC matters are conducted by a single commissioner, not an administrative law judge. WAC 390-37-140 through WAC 390-37-144. Therefore, if the Commission wished to use brief adjudicative proceedings for certain renewals of F-1 modification requests, it would want to consider amending WAC 390-37-140 (list of matters that can be heard in a brief hearing), and/or repealing WAC 390-28-060 (use of administrative law judge for modification requests), and/or removing other references in WAC 390-28 to administrative law judges and F-1 modification requests [*see, e.g.*, WAC 390-28-070(2), WAC 390-28-080].

### **OTHER POSSIBLE FUTURE ACTIVITIES OF INTEREST**

The topic of the status of laws governing new business entities such as LLCs and LLPs has recently been before the State Legislature. Bills were introduced during the 2006 legislative session that concerned LLCs. One bill would have affected the PDC. HB 2551 would have treated two or more LLCs as a single entity for campaign contribution purposes. That bill did not pass. SB 6531 did pass (Chapter 325, Laws 2006), and that act provides that when a LLC dissolves, an action for claims must be commenced within three years. The *Senate Bill Report* to SB 6531 described in part that:

The Washington State Bar Association could not do a comprehensive review of the Limited Liability Statute for this session, but this one small change should provided important relief in the short term pending that review. This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith.

This bill report seems to suggest that the WSBA will be or is conducting a review of the laws governing LLPs and LLCs, perhaps for next session.

NJK:kl